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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 457

C. J. ADAMS, ALIAS CHARLES ADAMS, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The majority (R. 108–113) and dissenting (R. 113–114) opinions in the circuit court of appeals are reported at 156 F. 2d 271.

JURISDICTION

The judgment of the circuit court of appeals was entered July 9, 1946 (R. 115), and a petition for rehearing was denied August 5, 1946 (R. 116). The petition for a writ of certiorari was filed September 4, 1946, and granted October 21, 1946 (R. 117). The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code, as

amended by the Act of February 13, 1925. See also Rules 37 (b) (2) and 45 (a) of the Federal Rules of Criminal Procedure.

QUESTION PRESENTED

The principal question presented is whether the evidence is sufficient to sustain the conviction of petitioner for knowingly aiding and abetting designated persons to fail to register for the draft and for conspiring to do so.

STATUTE INVOLVED

Section 11 of the Selective Training and Service Act of 1940, 54 Stat. 885 (50 U. S. C. App. 311), provides in part as follows:

> Any person * * * who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act * * * or any person or persons who shall * * * conspire to do so, shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * *.

STATEMENT

Petitioner was convicted (R. 24) in the District Court for the Southern District of Alabama on counts 2, 4, 6, and 7 of an indictment in seven counts (R. 1–13) charging violations of Section 11

of the Selective Training and Service Act. Counts 2, 4, and 6 (R. 2–3, 4–5, 6–7) alleged that petitioner and Carrie Lee Towns and Walter Towns knowingly counseled, aided, and abetted Samuel B. Towns, Samuel C. Towns, and John Towns, respectively, unlawfully to fail to register with their local draft board;[1] count 7 (R. 7–13) charged that the defendants and the Towns boys conspired to commit the crimes described in the other counts of the indictment. After trial before a jury, petitioner was sentenced generally to imprisonment for a year and a day and to pay a fine of $250 (R. 24–25).[2] Upon appeal to the Circuit Court of Appeals for the Fifth Circuit, the judgment was affirmed, one judge dissenting (R. 115).

The codefendants, Carrie Lee Towns and Walter Towns, are the parents of Samuel B. Towns and Samuel C. Towns, twin brothers, who were born in 1923 (R. 40, 41–42, 43, 47–48, 57), and of John Towns, who is older than his twin brothers (R. 43). Notwithstanding the fact that in 1944 the brothers were over 18 years of age and had a duty to register for the draft, they failed to do so (R. 52). When the local draft board inquired into their failure to register, the mother, Carrie

[1] Counts 1, 3, and 5 were identical with counts 2, 4, and 6, except that a different draft board was involved. These counts were dismissed on motion of the Government at the close of the evidence (R. 94).

[2] Petitioner's codefendants previously had pleaded guilty to the indictment (see R. 97).

Lee Towns, informed the board that they were not yet of draft age, and in support of this assertion she furnished the board delayed birth certificates purporting to show that the twins were born in 1930 and John in 1928 (R. 53–57). Thus the delayed birth certificates indicated that the twins were 14 years of age and John 16 when the certificates were obtained, instead of 20 and 22 as established by the evidence. The delayed birth certificates had been fraudulently obtained, and the Government's theory was that petitioner knowingly participated in the frauds.

The evidence bearing on petitioner's part in the scheme may be summarized as follows:

Petitioner testified that he is a notary public (R. 85). His testimony shows that he is thoroughly familiar with the procedure under Alabama law for obtaining delayed birth certificates R. 83–84, 86, 89, 91).[3] It was his practice to use official forms supplied by the Alabama Bureau of Vital Statistics or facsimilies which he would type as needed (R. 84–85). On a previous occasion in February 1944, he had acknowledged Carrie Lee Towns' signature on an application for a birth certificate for another child of the Towns (R. 89). On March 23, 1944, after a meeting with members of the draft board, Carrie Lee Towns came to petitioner's office and "said she wanted me to

[3] Petitioner testified that he "averaged beween five and six hundred [delayed] birth certificaates for the year 1944" (R. 83).

make out papers to get birth certificates for her children" (R. 54, 88). She brought with her a Bible (R. 82; Exhibit 15, R. 64)[4] which contained entries in pencil purportedly going back to 1910 (R. 77), and which showed false birth dates for her sons as detailed below. Petitioner, without inquiring whether any birth certificates were already on file,[5] immediately filled in an application form for each son and acknowledged the mother's signature on her affidavits on the forms (R 82, 88; Exhibits 4, 5, 6, R. 54).[6] He explained to her the necessity for supporting documents (R. 89), and on the following day she brought to him certificates of the custodian of the records of her church, which stated that those records showed that the three boys were under 18 years of age.[7] The three sons came to petitioner's office on March 25 and signed their affidavits on the forms, and petitioner acknowledged their signatures (R. 82, 88; Exhibits 4, 5, 6).

Petitioner prepared a supporting certificate,

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[4] Original exhibits 1–15, inclusive, are on file with the Clerk.

[5] Under Alabama law, delayed birth certificates could properly be obtained only if no prior recordation had been made (see App., *infra*, p. 27). It was established that the birth of the twins—under other given names—had been recorded on June 9, 1923 (Exs. 7–8, R. 57; Exs. 13–14, R. 60).

[6] The application forms (see Ex. 9, R. 59) consisted of one sheet and included form affidavits signed by the sons and the mother.

[7] The church official testified at the trial that the certificates were false and that he had signed them at the request of Carrie Lee Towns (R. 62).

dated March 24 (Exhibits 10, 11, 12, R. 59–60), for each of the boys concerning the entries in the Bible, as required by the state Bureau of Vital Statistics and substantially in the form prescribed by that bureau (R. 61, 84; see also Appendix, *infra*, p. 31, and Instruction 4g, p. 29). The certificate for John Towns is typical of the three and reads (Exhibit 12; see also R. 110):

> I, C. J. Adams, a Notary Public in and for said state and county hereby certify that I have this day examined the Family Bible now in the possession of Carrie Lee Towns which was published by Collins Clear-Type Press in the year of year not shown and the facts below appear to have been recorded many years ago. The Bible shows John Towns to have been born at Pleasant Hill, Ala.; date of birth Oct. 9, 1928; name of father Walter Towns and name of mother Carrie Lee Towns.

On the basis of these documents, the delayed birth certificates were obtained (R. 59).

It was developed at the trial that the Bible, printed in England, was not an old family Bible. For it was shown that although the Bible bore no publication date, it contained, at the place (on the fly leaf) where such a date would normally be found, a printed statement that the publisher was licensed to print the book on March 10, 1939 (R. 77–78, 81, 86–87; Exhibit 15). An F. B. I. agent testified that petitioner admitted to him that he filled in the various forms and acknowledged the

signatures, and that petitioner said that when the three boys came to his office he could "tell they were over eighteen," but he nevertheless proceeded to complete the papers (R. 73–76). This testimony was confirmed by another witness (R. 76–77), although denied by petitioner (R. 83, 91). It was also established that petitioner had previously pleaded guilty and served a sentence on an earlier charge in the district court below that he falsely certified, as a notary public, that a person who was actually deceased had appeared before him in connection with a claim for money, which certificate was later forwarded to the Veterans' Administration (R. 83, 93–94, 111).

Petitioner denied that he had ever been apprised of the purpose for which the delayed birth certificates were to be used (R. 81, 92). He testified, however, that he had "been helping the colored people since World War II with their selective service papers" and had "filled out more than 1,000 papers for selective service files" (R. 83). In addition, he testified that he told the F. B. I. agent that the boys looked to be over 15 years of age, not 18, and that he did not form this opinion until draft evasion proceedings were instituted against the boys (R. 83, 91).

SUMMARY OF ARGUMENT

I

The verdict is supported by the evidence. Petitioner, a notary public acting in a quasi-judicial

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capacity, certified that he had examined a family Bible and that the dates of birth appeared to have been recorded therein many years before. The certificates were made in support of applications for delayed birth certificates, and, under Alabama law, petitioner was required to use reasonable diligence to assure the accuracy of his examination and certification. Since personal observation of the applicants must have satisfied petitioner that they were older than they asserted and, in fact, were of draft age, and since the licensing date of the Bible showed that it was not printed until long after the dates of birth falsely recorded therein, the jury was entitled to conclude that petitioner was aware of the falsity of the applications in his certifications. This conclusion is supported by petitioner's admission to the F. B. I. and by his own testimony showing his wide experience in securing delayed birth certificates. The appearance of the applicants, the prevalence of the draft, petitioner's knowledge of and experience with selective service matters, and the implausibility of petitioner's explanation that for aught he knew the fraudulent birth certificates may have been desired for defense employment purposes, were all circumstances from which the jury was entitled to infer that petitioner knowingly assisted the Towns to obtain the certificates for the purpose of draft evasion.

The case was submitted to the jury under

proper instructions, including an instruction as to the necessity of finding that petitioner knew the certificates were intended to be used for draft evasion. This Court should affirm the conviction if there is substantial evidence, viewing the evidence most favorably to the Government, to support it. Petitioner's version of the events is inherently unbelievable and does not take account of the contradictory government evidence.

II

Petitioner's acts were not excused by reason of any presumption that official acts are faithfully performed or of an alleged immunity for omissions or mistakes in office. Such principles do not protect an official charged, as here, with wilful abuse of office by fraudulent participation in or aid of violations of federal criminal laws of general application.

III

No reversible error was involved in the trial judge's instructions permitting the jury to consider, on the issue of scienter, evidence of petitioner's prior conviction for fraud in connection with a Veterans' Administration matter. This evidence was material on the issue of petitioner's knowledge of the fraudulent character of the delayed birth certificates. In any event, petitioner has no standing to complain of the challenged instructions as improperly allowing the jury to con-

sider the prior conviction on the question of his knowledge of the draft evasion scheme. He took no exception to the instructions, and he did not raise any such question on appeal to the court below or in the petition for a writ of certiorari.

ARGUMENT

I

THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT THE JURY'S VERDICT

Petitioner's principal contention is that the evidence is insufficient to support the verdict (Br. 11–21). In appraising this contention, it must be borne in mind that "It is not for [this Court] to weigh the evidence or to determine the credibility of witnesses. The verdict of a jury must be sustained if there is substantial evidence, taking the view most favorable to the Government, to support it." *Glasser* v. *United States,* 315 U. S. 60, 80. See also, e. g., *Mortensen* v. *United States,* 322 U. S. 369; *United States* v. *Socony Vacuum Oil Co.,* 310 U. S. 150; *Abrams* v. *United States,* 250 U. S. 616. Applying this test, we submit that petitioner's contention can not stand.

Petitioner was indicted for knowingly aiding and assisting the Towns boys to evade registration and service under the Selective Training and Service Act of 1940 and for conspiring with them

and their parents for that purpose.[8] Under the aiding and abetting charges, the Government, of course, was required to show (1) that petitioner did acts which aided or assisted the Towns boys in evading the draft, and (2) that his acts were done with guilty knowledge.

As shown in the Statement, *supra*, pp. 5–6, the affirmative acts upon which petitioner's conviction of aiding and abetting is predicated consisted of his preparation and execution of the delayed birth certificate papers which showed the Towns boys to be only 14 and 16 years of age in 1944, whereas in fact they were 20 and 22 years old at that time. Petitioner does not deny that the delayed birth certificates, issued on the basis of the supporting documents, falsely understated the ages of the Towns boys. He denies, however, that there is any evidence of culpability on his part in respect of the falsification. We do not, of course, contend that any responsibility attaches to petitioner merely because he notarized the affidavits. In thus authenticating the signatures

[8] While we think that the evidence established, at the least, a conspiracy between petitioner and the boys' mother (see *Direct Sales Company* v. *United States*, 319 U. S. 703), it is unnecessary to discuss the propriety of the verdict on the conspiracy charge, since, in our opinion, the record adequately supports petitioner's conviction on the substantive charges of aiding and abetting, and the general sentence is supportable by the conviction on the substantive counts alone. See *Pinkerton* v. *United States*, No. 719, O. T. 1945, decided June 10, 1946, slip opinion, footnote 1, p. 1.

of the mother and the sons, he did not, as a notary, vouch for the truth of the matters asserted in the affidavits. Nor do we raise any question as to a notary's duty where he knows that the contents of an affidavit, for which he executes an acknowledgement, are false. The prosecution here is not predicated on such conduct, but on certain affirmative acts of petitioner going beyond the normal functions of a notary in authenticating signatures under oath. As the evidence shows, petitioner, in addition to notarizing the Towns' affidavits, certified, in accordance with the provisions of Alabama law, that he had examined the family Bible, which was tendered to establish the dates of birth of the boys, and that the dates of birth entered in the Bible "appear to have been recorded many years ago." It is primarily upon that action, which petitioner says was judicial in nature (Br. 19), that his responsibility is predicated.

It is obvious from an examination of the statute and of the administrative regulations of the State of Alabama governing the issuance of delayed birth certificates (Ex. 9, R. 59; see also Appendix, *infra*), that the officer who examines and certifies as to the authenticity of documents submitted in support of an application for such a certificate performs far more than a ministerial function. It is his responsibility to make a thorough examination of such documents and to assure himself and the Bureau of Vital Statistics,

which thereafter issues the delayed birth certificate in reliance upon his examination and certification, that the evidence of age contained in the documents is satisfactory and convincing. Under the Alabama procedures, the Bureau of Vital Statistics has delegated the function of examining such supporting evidence to officers such as petitioner, and therefore they must exercise every reasonable precaution to assure that the evidence is reliable. Especially in view of the state procedures and petitioner's responsibilities in such matters, as shown by the evidence, including petitioner's own testimony, the jury, we submit, was warranted in inferring that petitioner deliberately falsified his supporting certificates. Thus, the record shows that the Towns boys were in petitioners' office before his certificates as to his examination of the family Bible were sent to the Bureau of Vital Statistics, and that, in consequence, he must then have realized that they were older than they pretended. Moreover, the twins were witnesses at the trial (R. 67, 71), and the jury was entitled to form an opinion, based on their appearance, as to the impression that they had made upon petitioner less than a year and a half before.*

*In the brief filed in the court below by the United States Attorney whose office conducted the prosecution, it was pointed out that at the time of the trial one of the twins was about six feet tall and weighed approximately 200 pounds, the other twin being slighter in stature. The other son, John, concededly was two years older than the twins.

Additionally, an F. B. I. agent who talked with petitioner before his trial and a state police official who was present at the time testified that petitioner admitted that when the Towns boys came to his office in connection with the delayed birth certificate, anyone could "tell they were over 18." While petitioner denied making this admission and testified that he did not form any opinion as to the boys' ages until he saw them at their trial for draft evasion (see also Br. 12, 16–18) and that at that later date he had formed the opinion that "they would be over 15," the jury was fully entitled to believe the officers' testimony, particularly in view of the corroboration afforded by the boys' appearance. Petitioner's testimony was self-contradictory and inherently unbelievable. He admitted that in the year he prepared the papers for the Towns boys he had prepared papers for over 500 birth certificates, and it is therefore hardly likely that he would have judged persons of the descriptions of the Towns boys to be about 15 years of age. It also seems unlikely, in view of his responsibilities in such matters (see pp. 12–13, *supra*), that he did not form any opinion as to their true ages at the time he prepared the papers for them.

Despite the appearance of the boys and his own opinion, as expressed to the officers, that they were "over 18," petitioner nevertheless certified that he had examined the family Bible and that

the "facts" shown therein as to the dates of the boys' births appeared to have been recorded many years ago. The Bible was introduced at the trial (Exhibit 15) and is part of the record here. An F. B. I. laboratory expert testified that on the page on which the publication date would normally appear there is a printed statement that the publisher was licensed to print the book on March 10, 1939 (R. 77–78, 81; see also petitioner's testimony, R. 86). This was a clear indication that the book could not have been printed prior to that date and, therefore, that the pencilled notations were not authentic recordations made at the time of the boys' births. The form provided by the Alabama Bureau of Vital Statistics for the certification of the examining officer (Appendix, *infra*, p. 31) required that petitioner state the year the Bible was published. In the space provided for such information, petitioner inserted the statement, "year not shown." While this statement may have been literally correct, the jury was entitled to infer that petitioner had examined the Bible for the purpose of ascertaining the date of publication and had noticed the licensing date of 1939, which must have preceded a publication date if there had been one and which was printed on the page where a publication date would normally appear. Accordingly, the jury was entitled to infer further, in the light of other evidence before it, that this

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statement, like his statement that the entries appeared to have been made many years ago, constituted a misrepresentation deliberately made to assist the Towns boys to secure delayed birth certificates falsely representing that they were under 18 years of age. This inference is fortified by petitioner's admitted familiarity with the applicable procedures. See, particularly, R. 89. Obviously, the Bureau of Vital Statistics, in determining whether to issue a delayed birth certificate, is not interested in the date of publication *per se*, but only in the bearing that that or like information has upon the genuineness of the recordations as to the age of the applicant (see, e. g., Appendix, *infra*, pp. 28–30, Instruction 4). Thus, a proper response to the question as to date of publication would require furnishing any information which would directly or circumstantially indicate when the document was printed. And the licensing date was vitally relevant to indicate the earliest time at which the Bible could have been printed.

To counter this evidence showing the fraudulent character of his certificates as to his examination of the family Bible, petitioner makes two arguments. At the trial he claimed that he was not able to find a publication date (R. 87), and he repeats here his assertion at the trial that the licensing date was in such fine print that he could not read it (Br. 12). Whether or not his testimony was credible was a question for the

jury. Aside from his demeanor in testifying, which may have influenced the jury, there were other factors which may have caused them to disbelieve him. For example, on cross-examination, at the request of government counsel to find the date of publication in the Bible, petitioner immediately turned to the fly leaf and read a few words from the paragraph containing the data concerning the publisher's license to print, but said that he was unable to read the whole paragraph because of the fineness of the print (R. 86–87). However, when he was shown Exhibit 14, which is a certified copy of the certificate of birth of Isham Towns,[10] and which, like the Bible, has been filed in this Court as part of the record, petitioner was able to read without any apparent difficulty the portion relating to the number of children in the Towns family, which is, certainly, in no larger or more readable print than the date of licensing appearing in the Bible (see R. 89–90). The jury was therefore justified in concluding that petitioner's claimed inability to find or read the licensing date in the Bible was merely feigned.

Petitioner's second argument is that there is no proof that if he had inserted the licensing date in his certificates the Bureau of Vital Statistics would not have issued the delayed birth

[10] One of the twins was originally named Isham and the other Isaac (see fn. 5, p. 5, *supra*).

certificates, and that it must be assumed the Bureau would have issued the certificates because its rules do not require documents furnished in support of an application to be more than one year old (Br. p. 14). This argument is without merit. While the instructions issued by the Bureau state that the documentary evidence must be "at least one year old," that provision is obviously one of general limitation applying particularly to documents of recent origin, such as voting registrations and marriage licenses, rather than to old documents in which births are normally recorded about the time they occur. This interpretation is fortified by the specific instruction dealing with family Bibles, which provides that they may be used "if authentic, old, inspected and certified by" a specified official (see Appendix, *infra*, p. 29). Furthermore, the instructions and the state statute with respect to delayed birth certificates as a whole show that the ultimate fact to be proved is the age of the applicant and that all of the evidence must support the age asserted by him (see, e. g., the first and last paragraphs of Instruction 4, Appendix, *infra*, pp. 28–29, 30). Under these circumstances, petitioner must have realized that pencilled entries purporting to show ages of members of the family substantially in excess of the age of the Bible were not persuasive evidence of their ages and that, at the least, the Bureau of Vital Statistics should have had all of the available evidence before it, including the licensing date of the

Bible, in order to determine whether to issue the delayed birth certificates. While it cannot be said with certainty that the delayed birth certificates would not have been issued if petitioner had furnished the licensing date of the Bible in his certifications, there can be no question that the omission of that date materially enhanced the possibility that false delayed birth certificates would be issued.

The evidence, as a whole, therefore, clearly shows that petitioner knowingly aided and assisted in obtaining false delayed birth certificates for the Towns boys. It was these certificates which were the keystone of the draft evasion scheme.

The question remaining, therefore, is whether there was proof that petitioner knew that the delayed birth certificates were being secured for the purpose of aiding the Towns boys to evade the draft. In appraising the sufficiency of the evidence in this connection, it should be noted at the outset that when Mrs. Towns first went to petitioner to obtain the certificates for her sons, he immediately proceeded to prepare the necessary papers without making any effort to ascertain whether the births had previously been recorded,[11] although under the state law, such a

[11] In view of petitioner's prior conviction of complicity in making a fraudulent claim on the Veterans' Administration by certifying as a notary that a person actually deceased had appeared before him (see pp. 24–25, *infra*), his readiness to assist in procuring fraudulent birth certificates for the Towns boys takes on added significance.

certificate could not be obtained if the birth was already registered.[12] But more directly, petitioner admitted a thorough familiarity with the preparation of papers in selective service matters; he testified that he had "filled out more than 1,000 papers for selective service files" (R. 83). It may be judicially noticed that in 1944, at the height of the war, the draft was in full operation. At that time, even a person less informed in such matters than petitioner was well aware that men who appeared to be adults were imminently subject to the draft. He nevertheless aided the Towns boys, who manifestly were of draft age, to obtain false birth certificates showing them to be only 14 and 16 years of age. Petitioner undoubtedly realized the Towns had an ulterior motive in seeking certificates showing the boys to be far younger than they actually were, and his familiarity with the Selective Service System, his awareness of the draft and his observation of the boys must have made him realize—if he was not expressly advised—that the false certificates were to be used in a draft evasion scheme.

At the trial petitioner attempted to impress the jury with the idea that as far as he knew the birth certificates might have been desired for defense employment purposes (see R. 84; see also Br. 13). Apparently the jury chose not to believe this ex-

[12] The birth of the twins had been recorded in Alabama in 1923 (see footnotes 5 and 10, *supra*, pp. 5, 17). While that recordation was under other given names, Isaac and Isham, that fact is not relevant, because petitioner made no effort to ascertain the information.

planation. If for no other reason, the explanation appears unlikely because young men seeking employment would not be apt to substantially understate their ages. It does not avail petitioner to argue now (see Br. p. 13) that he was not shown to have been informed of the purpose for which the certificates were obtained. There were sufficient circumstances from which the jury was entitled to conclude that he must have known the use for which the certificates was intended.

Contrary to the implication of petitioner's argument, it is not for an appellate court to resolve conflicts in the testimony, or to determine the credibility of witnesses, or to weigh the evidence, but only to decide whether there is substantial evidence, taking the view most favorable to the Government, to support the jury's verdict. *Glasser* v. *United States,* 315 U. S. 60, 80. See also *Anderson* v. *United States,* 318 U. S. 350, 351, fn. 1. The question whether, in fact, petitioner had the requisite guilty knowledge was one for the jury, and the jury resolved that issue against him under full and fair instructions to which he took no exception (see R. 104). Thus, the trial judge admonished the jury (R. 97–98):

> * * * A man cannot be guilty unless he knew it was wrong. A man may do wrong, but, unless it is in his heart to do wrong, unless it had been in his heart and he knows what he is doing to effect a purpose agreed upon tacitly or otherwise, that man would not be guilty. Now, the ques-

tion here is did this defendant—and practically the only question in this case is did this defendant help to do something, knowing that something was wrong, do the facts and circumstances show or point to him as one who was aiding to put over the thought that those boys would not go into the service. As a matter of fact, they didn't go, and the undisputed testimony here is they were subject to the draft law. That may be true and their parents may be guilty, but you must go further and believe that this man knew those certificates were wanted, knew the purpose for which those certificates were wanted, that he knew something about why they were asking for them, that he became a party to it and aided them in violating the law. Now, did that happen? You must be convinced beyond a reasonable doubt that it did happen before you can convict him under those counts which set out that he aided and abetted in having so and so fail to report on such a date. Is there any evidence here to connect him with any aiding and abetting. The same applies to the conspiracy. * * *

The factors listed by petitioner (Br. 11–13) in support of his argument for reversal are predicated on his interpretation of the evidence in the light most favorable to him, and ignores evidence and inferences favorable to the Government, which convincingly contradict petitioner's exculpatory testimony. Moreover, his argument is

based on acceptance of his own testimony and overlooks the fact that the jury was entitled to disbelieve him, as it had reason to do, in view of the lack of plausibility of his testimony. In short, petitioner's review of the evidence before this Court would establish a new and unique test of appellate review contrary to established doctrine.

II

PETITIONER'S CONDUCT IS NOT EXCUSED BY REASON OF HIS OFFICIAL POSITION

Petitioner argues that since, in filling out the certificates as to his examination of the Bible, he was acting in a judicial capacity, there is a presumption of law that his acts were faithfully done in the performance of his duties, and that, as a public official, he is not liable civilly or criminally for an error, omission or mistake in the certifications (Br. 19–20).[13] This argument is unavailing. The Government's case is not predicated on charges of error, negligence, or mistake, but upon fraudulent and wilful abuse of office to aid and assist evasion of the draft. It is obvious that any presumption as to the propriety of an official's conduct or any immunity for mistakes in judgment does not extend to wilful, fraudulent, or criminal abuse of office,

[13] It should be noted in this connection that petitioner made no request at the trial for instructions concerning such a presumption or immunity (see R. 28–33). His defense was simply that he acted in good faith.

See, e. g., *Peonage Cases*, 123 Fed. 671, 684 (M. D. Ala.); *Bevard* v. *Hoffman*, 18 Md. 479, 484; *State* v. *Powers*, 75 N. C. 281, 284; *State* v. *Glasgow*, 1 N. C. 176, 187; *Price* v. *Commonwealth*, 132 Va. 582, 587–588; *United States* v. *Gonzaga*, 3 Philippines 135. And it has always been the law that a public official is subject to the general criminal laws of the community, whether his transgression is within or without the functions of office. See *Palmer* v. *D. C.*, 26 App. D. C. 31, 33–34; *State* v. *McLean*, 121 N. C. 589, 599–600. The evidence here shows a wilful abuse of office in aiding a violation of federal law, responsibility for which cannot be avoided by refuge under a cloak of authority.

III

NO REVERSIBLE ERROR IS INVOLVED IN THE TRIAL COURT'S INSTRUCTION PERMITTING THE JURY TO CONSIDER PETITIONER'S PRIOR CONVICTION ON THE ISSUE OF SCIENTER

Petitioner urges that it was error for the trial court to permit the jury to consider evidence of his prior conviction for another offense for any purpose other than its bearing on his credibility (Br. 21–23).

On his direct examination, petitioner testified, "I was convicted once in this Court and served time" (R. 83). Thereafter, without objection by the defense, the Government introduced the record of the conviction to which petitioner had referred, showing that he had been convicted of falsely certifying as a notary public that a per-

son who was actually deceased appeared before him to make a demand for payment of money by the Veterans' Administration (R. 93–94, 111). The trial judge instructed the jury that they could consider this evidence "for two purposes—it goes to his credibility as a witness, because it is a crime involving moral turpitude. The rule is that a man who is shown to have committed a crime involving moral turpitude—you may consider the evidence to that effect in weighing his testimony and determining his credibility, the theory being that a man who commits a felonious crime will more quickly lie than one who has not. Another purpose it may show is what we call guilty knowledge—we call it in the law scienter, on the theory that the man who knows how to do a thing, may do it more quickly. You simply weigh that when you consider all this testimony, to determine whether or not it could apply to this particular defendant or any defendant, in your case it is this particular defendant" (R. 100–101).

We submit that, as the trial judge indicated, the evidence of the prior conviction was relevant, aside from its relation to credibility, because it showed a predisposition on petitioner's part to further fraudulent schemes by abuse of his office, and hence was a pertinent factor for the jury to consider on the issue whether petitioner knew that the birth certificates were false. But even if, as petitioner argues, the instruction is sus-

ceptible of being interpreted as improperly allowing the jury also to consider the prior conviction on the question of petitioner's knowledge of the Towns' purpose in securing the birth certificates,[14] he is in no position to complain. In response to the court's inquiry at the close of the instructions whether defense counsel had any exception, the reply was in the negative (R. 104). Petitioner did not raise the point in the court below (see R. 34–35, 109), and in this Court it is not mentioned in his petition for a writ of certiorari. Rule 38 of this Court provides that "only questions specifically brought forward by the petition for writ of certiorari will be considered." See *General Pictures Co.* v. *Electric Co.*, 304 U. S. 175, 177–178; *National Licorice Co.* v. *Labor Board*, 309 U. S. 350, 357.

CONCLUSION

For the reasons indicated, it is respectfully submitted that the judgments below should be affirmed.

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FEBRUARY 1947.

[14] But cf. the instruction quoted at pp. 21–22, *supra*.

APPENDIX

Title 22, § 39, of the Code of Alabama (1940) Cumulative Pocket Part 1945, provides, in part, as follows:

> *Filing of delayed certificate of birth.*— Any person born in the State of Alabama whose birth has not been registered may have his or her birth recorded by the state registrar of vital statistics after complying with the requirements set forth below. * * * 3. For an individual who has passed his twelfth birthday a "delayed certificate of birth" form prepared by the state board of health shall be completed and sworn to by the person whose birth is being registered and one other person thoroughly acquainted with the facts. In addition to the above, the applicant shall furnish as a minimum two records or pieces of documentary evidence bearing his name and which support at least the statements made as to his age and county of birth. 4. The state registrar is authorized to accept what he considers authentic proof of the facts connected with the age, parentage, and place of birth of the individual concerned. Evidence submitted in support of a delayed birth certificate must be retained, and filed in permanent files with the state registrar. * * *

The "Instructions For Recording Delayed Birth Certificates" furnished with application

forms provided by the Alabama Bureau of Vital Statistics provide, as follows:

1. Certified copies issued are pictures of the certificate that you prepare and which we keep as a permanent record. Writing must be clear and legible so that the photostatic pictures can be made. Make correct entries—*no change will be made on the delayed certificate after it is recorded in this office.*

2. After filling in the information about yourself and your parents, go before a notary public and sign the first affidavit. *This affidavit is to be made only by the person whose birth is to be recorded.* If you cannot write, have the notary public sign for you and you place your "X" mark over your name. When relatives are making out a record of birth for a person who is deceased or who is now in foreign service, this affidavit need not be made. Instead, write "Registrant not living" or "Not available—in foreign service" across the face of this affidavit.

3. Get someone who has *known you all of your life* to make the second affidavit before a notary public. This person may be either a relative or someone not related to you, but if they are living, one of your parents should make this affidavit. If the doctor or midwife who attended at your birth is living, he or she may make this affidavit if your parents are dead. *Whoever signs this affidavit must be older than you are and must state the reason he knows the statements about your birth to be true.*

4. For the certificate to be acceptable by all agencies asking for them and for all purposes, the certificate must show unques-

tionable proof of your birth date and birth place. *This proof is in addition to the two affidavits appearing on the other side of this form* which are referred to in paragraphs 2 and 3 above. *This additional proof cannot be affidavits, but must be obtained from at least two documents.* Any two of the types of records listed below may be used to prove your date and place of birth provided they are *at least one year old and bear your name and contain the proof.* If certified copies, sworn statements about the original evidence or photostatic copies instead of the original record are submitted, the date the original record was made (or its approximate age) and the date the copy or abstract was made and the location and custodian of the original document must be shown. The reviewing official (probate judge, custodian, etc.) can prepare this certification for you. Certified statements not bearing the seal of the custodian or reviewing official must be on the official stationery or letterhead of the organization or agency.

a. Physician's or hospital *record.*

b. Birth certificate of registrant's children.

c. Baptismal, cradle roll, or other church records.

d. Local, state or federal census records.

e. School record (entrance or census record).

f. *Insurance* policy or application or statement from the company.

g. Family Bible record (if authentic, old, inspected and certified by a probate judge, health officer or similar public official).

h. Employment record.

i. Military discharge record.

j. Voting registration.

k. Certified copy of marriage license application.

l. Any authentic record containing required proof.

Remember—you are establishing your birth record and it is no stronger than your supporting evidence. You should furnish the best proof that you can assemble even though it may require additional time and effort. *Your certificate positively cannot be accepted for filing unless you submit at least two documents which individually or together give proof of birth date and birth place.* This is according to Title 22, Section 39 of the 1940 Code of Alabama, as amended. *No document less than one year old will be accepted as proof.*

5. Do not mail any of the above mentioned items until you are able to send them all together in one envelope.

These are:

a. The delayed certificate of birth, prepared as directed in paragraphs 1, 2 and 3 above.

b. Two or more pieces of the oldest documentary proof that you have as referred to in paragraph 4 above—this proof must be at least one year old.

c. A money order for fifty cents or more depending upon the number of copies wanted. Certified copies are issued only upon receipt of the statutory fee of fifty cents for each copy. Fee must be by *money order* made payable to the State Registrar of Vital Statistics.

d. Address mail to the Bureau of Vital Statistics, State Department of Health, Montgomery 4, Alabama.

CAUTION—Be sure to write the name and address of the sender in the space provided on the certificate. This is important. Do not fill in any of the space on the certificate below the line that reads "(Do not write below this line)." Follow the above instructions.

The form provided by the Alabama Bureau of Vital Statistics for certification of inspection and examination of a family Bible submitted as evidence in support of an application for a delayed birth certificate is as follows:

BIBLE RECORD

STATE OF
COUNTY OF

I, _____, a Notary Public in and for said State and County, hereby certify that I have examined the family Bible now in the possession of _____ _____ which was published by _____ in the year of ____ and that from the appearance of the Bible, the facts stated below were recorded many years ago. The Bible shows _____ to have been born at _____, date of birth _____, name of father _____ and maiden name of mother _____

Signature_____
(Seal) Date_____

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